FEDERAL COMMUNICATIONS COMMISSION

The Portals -- 445 12th Street S.W.

Washington, DC 20554

Cross-Ownership of Broadcast Stations and Newspapers	)))	**MM Docket No. 01-235**
Newspaper/Radio Cross-Ownership Waiver Policy	)))	**MM Docket No. 96-197**

SUPPLEMENTAL WRITTEN COMMENTS OF NICKOLAUS E. LEGGETT AND DONALD J. SCHELLHARDT

On October 3, 2001, we filed Written Comments in these Dockets, presenting our case for *tightening,* rather than loosening, regulatory restrictions on cross-ownership of newspapers and broadcasting stations in the same metropolitan area.

In those October 3 Written Comments, we indicated that the two of us are private citizens, with a history of personal *and* professional involvement in public policy issues.

Nickolaus E. Leggett is an amateur extra class radio operator (call sign N3NL), inventor, certified electronics technician and political scientist. He holds a B.A. in Government from Wesleyan University (in Middletown, Connecticut) and an M.A. in Political Science from Johns Hopkins University. **Donald J. Schellhardt** is an attorney, licensed in Virginia and Connecticut, who has held responsible public policy positions with a Member of Congress, the U.S. EPA, the American [Natural] Gas Association and other Washington institutions. He earned a B.A. in Government and English from Wesleyan and a law degree from George Washington University.

We hereby submit these Supplemental Comments in order to introduce into the record our October 10, 2001 Written Comments in MM Docket 92-264. This FCC proceeding seeks public input on the possibility of further relaxation of, or even total elimination of, the Commission's existing restrictions on cable systems ownership.

These referenced Written Comments are **Attached.** While these October 10 Written Comments were filed in a proceeding which focuses on cable systems ownership, the vast majority of the points they make are equally relevant -- if not *more* relevant -- to the Commission's current deliberations on cross-ownership of newspapers and broadcasting stations in the same metropolitan area.

We ask the FCC to consider carefully the **Attached** Written Comments in MM Docket 92-264, as well as our October 3 Written Comments in MM Dockets 01-235 and 96-197, as the cross-ownership restrictions are reconsidered.

Respectfully submitted,

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Dated:

October 11, 2001

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Cable	**)**	
Ownership	**)**	**MM Docket No. 92-264**
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WRITTEN COMMENTS OF DON SCHELLHARDT AND NICKOLAUS LEGGETT

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WRITTEN COMMENTS OF
DON SCHELLHARDT AND NICKOLAUS LEGGETT

Don Schellhardt, Esquire, and Nickolaus Leggett hereby submit formal Written Comments on the question of whether existing limitations on cable ownership should be eased. We say **"NO".** In fact, we contend, existing ownership restrictions should be *tightened.*

Indeed, we recommend that *divestiture* should be initiated in the case of firms which: (a) own other major media outlets, besides cable, in a given metropolitan area; *and/or* (b) own cable systems in each of several different metropolitan areas.

Donald J. Schellhardt is an attorney, licensed to practice law in both Virginia and Connecticut. At present, he is a solo practitioner of regulatory, legislative and family Law. In the past, however, he has held a number of responsible public policy positions inside and outside of government, including Legislative Counsel to U.S. Representative Matthew J. Rinaldo (R-NJ, retired), who served on both the House Energy & Commerce Committee and its Communications Subcommittee … GS-15 Policy Advisor on global warming at the U.S. Environmental Protection Agency … and Director of Legislative & Regulatory Affairs with the American [Natural] Gas Association.

Don holds a 1971 Bachelor of Arts degree in Government from Wesleyan University (in Middletown, Connecticut) and a 1975 Juris Doctor from the National Law Center at The George Washington University.

Nickolaus E. Leggett is an amateur extra class radio operator (call sign N3NL), an inventor and a certified electronics technician. He is writing from his perspective as political scientist, with a 1968 Bachelor of Arts degree in Government from Wesleyan University and a 1970 Master of Arts degree in Political Science from The Johns Hopkins University.

Both Don Schellhardt and Nickolaus Leggett have been Co-Petitioners in FCC Docket RM-9208 (in which they petitioned, successfully, for establishment of a Low Power Radio Service) and Docket RM-5528 (in which they petitioned, unsuccessfully, for a Notice of Inquiry on shielding of electronics equipment against an Electromagnetic Pulse attack). In September of 2001, they again filed a Petition -- as yet un-Docketed -- on the subject of Electromagnetic Pulse attack, this time seeking a Notice of Proposed Rulemaking rather than a Notice of Inquiry. They simultaneously filed a similar Petition for a Notice of Proposed Rulemaking with the Federal Aviation Administration.

We are individuals, not institutions. We do not have the time, the energy *or* the funding to conduct detailed and sophisticated economic analyses of potential new mergers and acquisitions in the cable industry. What we *can* do, and *are doing* here, is to question the widespread belief that unfettered market decisions are inherently wiser than regulatory decisions.

We further assert that *regulatory* decisions, on potential new mergers and acquisitions, should consider *far* more than the impact on short term consumer prices alone.

Where mergers and acquisitions are concerned -- *particularly* in the "strategic industries" of mass communication -- the various factors which *truly* constitute "the public interest" are multiple, numerous and complex. This complexity, which casts before it an inescapable shadow of uncertainty, argues forcefully for a rebuttable regulatory presumption *against* such mergers and acquisitions -- not in favor of them.

NEEDED:
A BROADER CONCEPT OF "THE PUBLIC INTEREST"

During the Justice Department's recent courtroom campaign to break up Microsoft -- an effort which has now (sadly) been abandoned by the Federal Government, despite (or perhaps because of) its preliminary success -- a defender of the software giant said this:

"Anti-trust laws are supposed to protect consumers, not competitors."

This is a succinct statement of the philosophy which has governed anti-trust policies since at least the early 1980's, if not before. Massive concentrations of market power -- when and if they are challenged by the Federal Government at all -- are usually challenged *only* when it can be argued that *consumers* are being harmed, or might be harmed in the future, by higher short term prices. For decades, we have rarely, if ever, seen market power concentrations challenged due to their impact on opportunities for competitors, upward mobility for individuals and/or the life of the society as a whole.

The currently fashionable fixation on protecting the short-term interests of citizens as *consumers,* but **NOT** as entrepreneurs or employees or taxpayers or voters, is an unduly narrow interpretation of the classic federal anti-trust statutes.

If transplanted to the context of the Federal Communications Commission, which has an *extremely* broad statutory mandate to serve "the public interest" *in general,* the fashionable but narrow focus on consumer price impact alone is even *more* out of place. Those who urge the Commission to adopt such a narrow focus, even in the context of the FCC's very varied responsibilities, are engaged in the functional equivalent of telling a man who can see every color to ignore anything that isn't orange.

We add that, even within the narrow boundaries of a focus on the interests of citizens as *consumers* alone, it is shortsighted indeed to concentrate solely on the matter of short term price impact. Consumers also have a stake in the *long term* price impact of concentrated market power. Further, consumers have a stake in the *value,* as well as the price, of the products and/or services they are purchasing.

If the FCC is willing to look at the citizens of America as *whole persons,* rather than as consumers alone … and if the FCC's economic analyses consider the long term *value* of regulated products and/or services, as well as their short term prices … then, we submit, it will become much more difficult to justify a "blank check" for additional corporate mergers and acquisitions in the mass communication industries. Indeed, we contend, it will become much more difficult to justify even the *current* concentrations of market power in the mass communication industries.

A CITIZEN IS MORE THAN A CONSUMER

(1) A citizen is, in many cases, an employee as well as a consumer. A 1% drop in the short term retail price of a given product or service, or even a 10% drop, is no blessing for a consumer if the tradeoff is being laid off.

Although companies eager to swallow other companies often claim they can achieve "efficiencies of scale", we have rarely seen them promise -- let alone deliver -- a decrease of more than 10% in the retail prices of their products and/or services. On the other hand, such companies almost always deliver (although they do not always promise) a massive wave of layoffs, usually limited to (or predominantly initiated within) the ranks of the acquired firm(s) rather than the ranks of the firm that is doing the acquiring.

Nevertheless, direct post-acquisition layoffs are only part of the human and social price tag for the *promised* "efficiencies of scale" from mergers and acquisitions. The Commission must also consider *the "opportunity cost"* of jobs that will never be created in the first place because there is less room left in the market for small companies to grow.

It has been well-established, for at least three decades now, that small companies have been the pacesetters in the creation of new jobs. If something approaching a full employment economy is still an important goal for our society, we should heed the lesson that job creation is now *inversely* correlated with corporate size. Companies with less than 50 employees have been growing new jobs the fastest, companies with 50 to 100 employees have been running second and so on -- up to the Fortune 500 giants, whose overall "track records" in creating new jobs have been flat, *or even negative,* since at least 1970.

In short: To the extent "the public interest" can be measured by the number of *members* of the public who actually hold jobs, regulators should be *discouraging* the direct or indirect displacement of small companies by huge companies -- because of the latter's *in*efficiencies of scale.

(2) A citizen is, in some cases, a business owner and/or an entrepreneur as well as a consumer. The American Dream has frequently been described as a lifemate, children, a single family home, two cars in the garage and perhaps a cat and/or a dog. Not all Americans dream this dream, but a clear majority of them do. Sometimes, in addition, the American Dream has been said to include the hope of upward mobility: living standards which rise, rather than stagnate or decline, over time -- and a better life for a family's children than the one the parents have lived.

Employment of some kind is usually an essential part of attaining any or all of the American Dream, but the Dream is much larger than employment alone. It is a vision of ascent, not merely survival … and, sometimes, it is a vision of personal sovereignty as well as personal prosperity. Sometimes, it moves beyond owning a home of one's own -- to include owning, or even starting, a business of one's own.

Thus, the human costs of "market consolidation" can encompass far more than the number of people whose jobs are lost. Any just tally must also include the people whose *dreams* are lost.

When small businesses are denied a fair chance to become medium-sized, and medium-sized businesses are denied a fair chance to become large, this builds up mountains of dashed hopes. The mountains may rise pebble by pebble, but rise they will. Such mountains of disillusionment then, in turn, begin to bury the very credibility of American society and government -- by wearing away the vital, cornerstone belief among individual Americans that they can get ahead in life so long as they work hard, obey the law and "follow the rules".

We add that, historically, individuals and small institutions have contributed far more than a proportionate share of America's innovations, both technological and artistic. From Edison the Inventor to Gershwin the Composer, and from Bell's first phone to Steve Jobs' homemade computer in the garage, individuals and small institutions in America may have *become* powerful and established as a result of their innovations -- but they were typically "outsiders" on the fringes when they *made* their innovations. Had their initial markets been pre-empted by megacorporations, and/or had their initial careers and/or organizations been pirated by hostile (or even friendly) mergers and acquisitions, the losses to America would have been incalculable. Indeed, the *cumulative* losses to America -- *solely* from systematically precluded trailblazing by individuals and small institutions -- might have been enough to shift the role of primary world leadership to a rival nation.

The prospect of such lost opportunities in the future is surely grave enough to merit inclusion in any serious endeavor to calculate where "the public interest" lies.

(3) A citizen is, almost always, a resident as well as a consumer. Some Americans may truly be "drifters", but most Americans set down *some* kind of roots in *some* kind of community. For many Americans, these roots may be temporary -- but while they're there, they're there. While they're there, they give individuals an overlap of self-interest with the communities in which they reside.

The phenomenon of "market consolidation" is, by definition, anti-local. A large corporation with 50 notches on its belt of acquisitions may have 50 field offices, or even many more, but it will have *one* corporate headquarters, separated from all of the acquired local operations by miles *and* attitude. When large, out-of-town corporations acquire smaller, locally based concerns, they drain away consumer dollars that might otherwise remain in the community where they were spent -- *and* they also reduce the influence that local residents might otherwise have over local business operations.

Nowhere has this been more evident than in the case of rural, small town and small city radio stations that have been acquired by large corporations -- or by NPR. With chilling repetition, the new owners have closed down local news departments and replaced local programming (as well as local employees) with automated translator equipment that simply relays programming from cities dozens or hundreds of miles away.

(4) A citizen is, in most cases, a voter and/or a taxpayer as well as a consumer. "Information," it has been said, "is the currency of democracy." More than anything else, voters need accurate and complete information, plus a *choice* of competing ideas, in order to make intelligent, responsible decisions about the course which public policy should take.

From this premise, it follows that excessively concentrated control over the flow of information -- and ideas -- is excessively concentrated control over the operation of democracy itself. At the most fundamental level, large concentrations of mass media ownership are a "clear and present danger" to representative democracy.

We hold this truth to be self-evident. If only more of our business and political leaders agreed!

A CONSUMER IS NOT AN AMOEBA

An amoeba is a one-celled, microscopic organism. It is "born" as the second half of another amoeba that has split in two. It eats, lives, grows and splits in two itself, thereby producing another amoeba, unless it dies first. To the best of current human knowledge, an amoeba dreams no dreams and thinks no thoughts. It simply eats, lives, grows and splits in two, unless it dies first.

So far as we humans know right now, an amoeba does not "choose" to do something in the way that a human being chooses. Apparently, it has no concept of deferred gratification and no ability to plan ahead for the future. An amoeba responds to food by going after it and responds to pain -- heat, cold, electricity -- by moving away from it. That, so far as we know right now, is an amoeba's life.

Some "free market" economists appear to theorize that human beings are like amoebae, or at least should be like amoebae, when they act as consumers. Mergers and acquisitions are seen by these economists as good for consumers because they produce the "food" of lower short term consumer prices -- or at least they do when the promised "efficiencies of scale" actually materialize *and* are passed along, at least in part, to somebody besides the acquiring company's stockholders.

We have already stressed the point that American citizens are more than consumers alone. *Now* we make the point that, even when regarded as consumers alone, human beings are not amoebae. They are complex, *not* single-celled -- *and* capable of thinking, dreaming and making sophisticated tradeoffs, *including* deferred gratification.

(1) A consumer has an interest in LONG TERM price impact, as well as short term price impact.

(a) "Loss Leaders". A classic market strategy is the concept of the "loss leader": a product and/or service which is sold at a very low profit margin, or even below cost, in the hope of inducing a consumer to buy other, more profitable products and/or services later. A prominent modern example is the newly issued credit card, with an interest rate of "only" 2% or 3%, which automatically turns into 18% or 20% or more in 3 to 6 months. By this time, the credit card company hopes, the consumer will have acquired a debt, at 2% or 3% interest, which is too large for the consumer to discharge immediately once the rate "flips" to 18% or more.

(b) Product "dumping". A more extreme version of this basic strategy is the "dumping" of goods into the U.S. marketplace by foreign manufacturers. Such "dumped" products, which can be anything from imported steel to imported toys, are sold at or below the costs of producing and shipping them -- that is, are sold at a loss -- in the hope of seizing market share from domestic competitors.

Certain kinds of "dumping" are illegal, under one or more American statutes.

"Dumping" is viewed as particularly onerous when the foreign manufacturer's losses are subsidized, partly or completely, by the foreign manufacturer's government.

Nevertheless, legal actions against "dumping" have been initiated by the Federal Government rather sparingly. Further, the relief obtained, and in some cases even the relief *requested,* has often been limited in proportion to the damage that was done. From this experience, we know that *successful* "dumping" usually leads to *higher* consumer prices in the long run. Especially when entire American industries are "targeted" by Japan or other economic rivals of the United States, the "dumping" usually continues until domestic producers have lost substantial market share -- and/or gone out of business. At *that* point, the "dirt cheap" prices suddenly rise very steeply, as the dumping suppliers take advantage of their new role as masters of the market in question.

(c) Electric utility deregulation. To cite a third example, which is *not* directly connected to the sensitive issue of foreign trade, consider the experience of California with electric utility deregulation.

In California, many new Independent Power Producers (IPPs) were allowed to enter the power generation market. In addition, a number of pre-existing powerplants, owned by utilities, were *turned into* IPPs when utilities send them off.

While this may have been a defensible initiative in itself, it was *coupled with* release of the IPPs from the supply obligations that natural gas and electric utilities have traditionally had to carry. That is: Unlike traditionally regulated utilities, the IPPs, once online, had no obligation to *stay* online. They could wink on and off the power grid whenever they chose to do so.

In addition, to free the IPPs further, PG&E and other utilities that remained regulated were strongly discouraged by the State of California from entering into long term contracts, featuring relatively stable prices, with IPPs. Thus, IPP prices -- including those charged by deregulated IPPs that were themselves *owned* by regulated utilities -- could fluctuate instantly in keeping with "changing market conditions".

The idea was to turn all or most of the California power grid into a "spot market". Regulated utilities were effectively *required* to purchase IPP electricity -- while commercial and industrial direct purchasers were *allowed* to purchase IPP electricity -- solely on the basis of whichever IPPs were offering the lowest bids *at that particular time.* With sophisticated computer programs, the state's large electric utilities, along with the more affluent direct purchasers of power, were able to shift IPP suppliers on a *literally* minute-by-minute basis, driven by constantly fluctuating bids.

Under California's deregulation scheme, regulated utilities were *not* allowed to select the lowest IPP bids for a 5-year or a 10-year power supply contract, since such a contract would get in the way of constant cruising for the lowest possible price *right now.* IPP power supply contracts were deliberately kept short term -- where possible, minute-by-minute -- because state legislators and regulators wanted to *pressure* utilities, and *allow* commercial and industrial direct purchasers, to squeeze every possible reduction in price out of a competitive "spot market".

Unfortunately, neither the state legislators nor the state legislators, nor the consumer groups and California utilities that *supported* deregulation, seemed to realize that what goes down *may* come back up.

Minute-by-minute switching between electricity suppliers, facilitated by the absence of binding long term contracts between utilities and IPPs, *can* shave consumer prices considerably -- *so long as* there is a surplus of energy in the power pool. When and if the surplus generating capacity is gone, however, the dynamics shift wildly into reverse. *At that point,* it is the *purchasers* who are submitting the competing bids and the *suppliers* who are in a position to pick and choose the best price -- which, from their perspective, is the *highest* price. This is what happened this year in California, and to a lesser extent in other power grids, and in California it was compounded by the fact that IPPs had no supply obligations to electric utility purchasers.

It is not surprising that *peak* prices for IPP-generated power, during the worst of California's electricity shortages, reached levels as high as $700.00 per kilowatt hour -- more than 50 times a typical average price. Further, even at this price level, rolling brownouts and blackouts could not be avoided.

The severe shortage of overall generating capacity occurred, in part, because the absence of long term contracts with utilities had encouraged IPPs to build relatively small facilities -- fired by natural gas (a comparatively scarce fossil fuel) and designed primarily for meeting temporary surges in demand -- rather than baseload powerplants that use more abundant energy sources, such as medium Btu coal gas or solar power. Other factors also played a role in bringing on the power shortage, including California's illogical decision to limit how much utilities could pay for deregulated, IPP-generated electricity *without* imposing comparable limitations on how much commercial and industrial direct purchasers could pay. Utilities had a built-in bidding disadvantage.

In short: California has vividly demonstrated, or rather *re*-demonstrated, the Economics 101 proposition that binding long term contracts may *protect suppliers* from downward price pressures during times of surplus -- *but also protect consumers* from upward price pressures during times of shortage. Long term contracts are a good, and indeed necessary, compromise, protecting both suppliers and consumers from the worst that could happen to either.

Such contracts, however, clearly and consciously restrain "natural" market forces -- which is *precisely* the point. Just as our respect for Nature does not prevent us from building dams that "artificially" irrigate farmlands and prevent disastrous floods, so our respect for market forces should not keep us from embracing reasonable contracts *and* regulations that "artificially" keep businesses in business and protect consumers from sudden price shocks.

(2) Not all consumers have identical interests. We offer two examples to illustrate this principle.

(a) Airline deregulation. Airline deregulation has led to *some* modest reductions in retail air fares on high-volume routes, such as Washington Dulles to Los Angeles or Newark to Orlando. At the same time, retail air fares on low-volume routes, and even some moderate-volume routes, have skyrocketed. A look at *average* retail air fares, following deregulation, is therefore misleading: the *average* price blurs the fact that travelers between busy airports have gained a little while travelers to (or between) small to medium-sized airports have generally lost a lot.

It is an open question whether unrestrained market forces are just when a minority of consumers suffer greatly so that a majority of them can benefit slightly. If market forces are *not* just in cases such as these, then market forces should be restrained.

(b) Electric and natural gas utility deregulation. In the case of electric utility *and* natural gas utility deregulation, in places across the country, a major goal -- and consequence -- has been the removal of many utilities and natural gas pipelines from their classic role as monopoly providers of energy. Commercial and industrial consumers have frequently taken this as an opportunity to negotiate their own arrangements for purchasing electricity and/or natural gas directly from the primary suppliers -- with utilities and natural gas pipelines often relegated to the role of simply delivering the electricity and/or natural gas to a commercial or industrial direct purchaser.

Unfortunately, individual citizens, and most small businesses, typically lack the resources to even negotiate with natural gas producers and/or Independent Power Producers -- let alone the resources to engage in minute-by-minute "tracking" of competing bids. Some residential "buying co-ops", in which individuals pool dollars in an attempt to approximate the bargaining power of a mid-sized corporation, have been organized, but they appear to be few and far between.

In general, therefore, large commercial and industrial energy users have been able to "make their own deals" with either independent suppliers or utilities, playing one against the other in some cases. In the meantime, individual consumers and small commercial energy users have been left with no practical alternative to their traditional utility, except -- in some cases -- new "mini-utilities" with very limited resources and/or other, multi-state utilities from outside their area. They have generally *not* been in a position to become viable direct purchasers, able to bypass utilities completely.

While, for a time, a falling tide lowered all boats, direct purchasers were from the start in a position to reap greater benefits from the energy surplus than individuals and small businesses. Now that the tide has turned and energy prices have climbed much higher, direct purchasers remain in a preferred situation, better positioned than utility-dependent individuals and small businesses to "lock in" a firm claim to reliable energy supplies and/or to limit the size of future price increases.

Again, we face the fact of life that consumers do not have identical interests -- and that not all consumers are treated identically by the marketplace. In an unrestrained marketplace, those who can purchase large volumes of energy (or almost anything else), *and* can offer at least the possibility of doing so on a long term basis, are generally going to be able to obtain much better bargains than those who buy small volumes on a less predictable basis. Electricity and natural gas utility deregulation, by allowing the natural advantage of large volume purchasers to assert itself more forcefully, weakens or removes past efforts by government to "artificially" establish a more even balance of purchasing power.

The question is whether government policies which return to a more "natural" balance of purchasing power are a *good* thing. Given that energy is virtually a necessity of life today, we say **"No".** We also repeat our point that *information,* including diverse news coverage on cable TV, is a necessity of life for our democracy.

(3) A consumer has an interest in VALUE as well as price. "Cheap is dear," the old adage goes. Sometimes, the old adage is true.

(a) Airline deregulation. As we noted above, a majority of airline travelers -- that is, those on high-volume routes -- have enjoyed moderately lower retail air fares as a result of airline deregulation … or at least they have done so until now. Meanwhile, travelers to destinations such as Stockton or Des Moines have seen their air fares double or more.

Nevertheless, even the "winners" on price reduction have found themselves shuttled far more frequently to "hub" airports, in place of the direct service they used to enjoy, and have had to put up with longer delays in flights and departures. These flyers may be paying less than they would be paying without deregulation, but are they paying less *per hour?* And, when their flights *on business* take longer, do "free market" economists include the *employer's* loss of potentially productive work time among the costs of airline deregulation?

Meanwhile, the "losers" on price reduction have been even bigger "losers" on service. In many cases, their small city home airports are now offering far fewer flights (if they have not closed down completely) *and* those flights which remain are frequently available only on "commuter" airlines, with crash rates 10 times higher than the average rate for major airlines.

(b) Electric and natural gas utility deregulation. As the situation in California has made abundantly clear, even *short term* reductions in energy prices may

require as a tradeoff markedly less reliable service. The California drama will repeat itself elsewhere, throughout the country, and may soon expand to include natural gas shortages as well -- until and unless: (I) the trends toward electric and natural gas utility deregulation are reversed; *or* (II) the concept of utility deregulation is re-defined so that it is no longer synonymous with the erosion of long term supply contracts.

The lesson for the Federal Communications Commission, from all of the examples we have cited, is this: Business is too important to be left to business alone.

A CORPORATION IS NOT ALWAYS A GOOD JUDGE OF ITS OWN INTERESTS

In assessing the costs and benefits of unrestrained mergers and/or acquisitions, and/or other forms of total deference to "market forces", the Commission should *not* assume that those corporations which advocate less regulatory oversight are necessarily the best judges of their own best interests.

This past summer, Pacific Gas & Electric (PG&E) -- for decades, the largest and most prosperous natural gas and electric utility in the nation -- filed for bankruptcy, as a direct result of losses suffered in the wake of electric utility deregulation by the State of California. Guess who had lobbied harder than anyone else to achieve electric utility deregulation in the State of California? PG&E.

Last month, in response to a Presidential plea, the United States Congress approved a $15 billion "bailout" package to save several major airlines from bankruptcy. While the events of September 11 -- followed as they were by a multi-day suspension of commercial flights, huge subsequent drops in passenger volume and costly upgrades of airline security -- may have been "the straw that broke the camel's back", the camel's back was straining visibly *before* September 11. A few weeks of disrupted business and unexpected costs would not have brought so many airlines to the brink of bankruptcy so quickly if those airlines had been financially healthy in the first place.

Apparently, therefore, decades of airline deregulation have *not* left America's major airlines in positions of financial strength. Yet the same large airlines that were relatively better off *before* deregulation have been among the strongest advocates and defenders of reduced regulation. Again, we see evidence that even the largest and best-informed corporations are not the best judges of their own best interests when it comes to government regulation. Perhaps these corporations believe too much of their own propaganda.

Moving to the context of cable systems ownership, having *more* cable system owners will provide *more* opportunities for the marketing of diverse and/or innovative and diverse programming, which can be syndicated elsewhere if the public likes it. *More* choices of material for cable syndication can, in turn, generate *more* opportunities, nationwide, to attract viewers to cable programming.

In addition, having *more* cable system owners will also mean *more* programming, *and* also more news and feature coverage, that is tailored to local audiences rather than standardized. This increase in locally tailored coverage will, in turn, create opportunities for attracting *more* viewers to cable programming nationwide.

In short: A strong case can be made that *de*-consolidation of cable ownership will actually be *better for business* than further increases in consolidation. Certainly, the drops in total U.S. radio listenership, *following* recent waves of market consolidation in that industry, are powerful evidence that widespread mergers and acquisitions can be *bad* for business.

At best, therefore, massive "market consolidation" may simply mean that that a few firms are gaining much larger *shares* of a shrinking market -- in effect, increasing their own revenues, *in the short term,* at the expense of lower revenues for the industry as a whole. As for the *long term* consequences, the current plight of America's largest airlines -- in the relatively deregulated market *they* asked for -- suggests that even the apparent "winners" from wholesale deregulation may have simply "traded up" to a larger suite on the Titanic.

THE "TRICKLE DOWN" THEORY HAS GONE GLOBAL

The "trickle down" rationale for mergers and acquisitions is much weaker in a "global economy" than it would have been in the "insulated economy" before 1970.

In the years and decades before the current "globalization" of corporations, it could be argued plausibly -- though not, in our view, correctly -- that unrestrained mergers and acquisitions can benefit the economy *in general,* even though they might harm individual employees, entrepreneurs, acquired companies and communities.

Historically, this argument has had two basic prongs. First, it was asserted (or assumed) that a merger or acquisition will achieve “efficiencies of scale”. Second, it was asserted (or assumed) that the *benefits* from these promised “efficiencies” will “trickle down” to the American economy as a whole. In theory, the benefits from these “efficiencies” are transferred directly to shareholders, and indirectly (through lower prices) to consumers, both of whom then invest, save or spend the dollars.

Thus, the classic “public interest” rationale for mergers and acquisitions has been this: (a) the promised “efficiencies of scale” (*if* they actually materialize) will be translated into lower consumer prices, and/or into higher profits for those who hold stock in the acquiring companies; (b) the consumer savings will be invested, saved or spent, and the higher stock profits will be *re*-invested, saved or spent, thereby stimulating the American economy; *and* (c) the stimulus to the American economy from these factors will be greater than the total *drag* on the economy from laid off employees, precluded innovations and the transfer of retail profits from the communities where the consumer dollars were received to the megacorporate headquarters far away.

This argument has always been debatable and, in our view, unconvincing -- at least in the case of most mergers and acquisitions. We concede, however, that at one time in American history the argument might have been a “close call”.

Back then, before the “global economy” emerged in earnest, the argument turned on whether higher stock prices and/or consumer savings, invested, saved or spent *in America,* would outweigh the negative impact of lost jobs, precluded innovations and economically damaged communities *in America.*

Today, however, the equation is different. Today, less than half of all the U.S. dollars in circulation can be found within the borders of the United States -- compared to more than 70%, as recently as 1960. Stock profits and/or short term consumer savings, *if* they materialize, may now be spent on a Gateway computer or a Sony CD player or furniture from Ikea. They may be invested in shares of Boeing or Hyundai or Aerobus. They could sit in a bank in Boston or Zurich or the Caymans.

Therefore, when it comes to the overall impact of mergers and acquisitions on the total society, we are no longer balancing economic losses in *some* of America against economic gains, from stock profits and/or savings, in *other* parts of America. Instead, we are balancing economic losses that will *surely* be incurred in America against economic gains that *may or may not* remain in the country -- and could easily flow to any other points on the globe.

"Globalization" has made mergers and acquisitions into a new ball game -- justifying *more* restrictions on mergers and acquisitions in America, not fewer.

"AN OUNCE OF PREVENTION" IS THE CONSTITUTION'S GOAL

The authors of the U.S. Constitution clearly believed that "an ounce of prevention is worth a pound of cure" when it comes to abuse of power.

Their guiding principle was best expressed in the famous conclusion reached by Lord Acton of Great Britain:

"Power corrupts, and absolute power corrupts absolutely."

In designing the Federal Government, the architects of our Constitutional Republic consciously sought to *prevent* large concentrations of power from developing in the first place -- rather than relying on mechanisms to punish or correct abuses of power *after* they occur. Government power was deliberately divided against itself -- Federal vs. State, Federal Legislature vs. Federal Executive vs. Federal Judiciary, the United States House of Representatives vs. the United States Senate -- and the power of the people was itself limited in various ways, most notably by a Bill of Rights that prevented even huge popular majorities from abridging certain liberties.

"Power corrupts," Lord Acton said. He didn't say: *"Government* power corrupts, but economic power is totally harmless."

Had today's global megacorporations dominated America's private sector in 1787, rather than the array of individual landowners and craftspeople who shaped the American economy at the time, it is highly unlikely that our nation's founders would have left these corporate giants completely unrestrained. They would have strengthened the Commerce Clause of the Constitution -- and/or taken other steps to assure that large corporate institutions would not jeopardize individual liberties *or* national sovereignty.

It now falls to Americans of *our own* century to deal with modern perils to liberty and sovereignty that America's founders left unaddressed because they were then unforeseen. It behooves 21st century Americans to rediscover the principle of "balance of power" -- and apply it to large concentrations of power, both current and potential, *within the economy* as well as within the institutions of government.

In short: The Federal Communications Commission, and other arms of the Federal Government, should act continually to *prevent* excessive concentrations of power -- rather than allowing them to occur and then trying to "police" the inevitable abuses of that power.

CONCLUSION

All in all, the numerous factors which constitute "the public interest" argue, strongly, for *tightening* -- rather than loosening -- the current restrictions on cable systems ownership and other mass media mergers and acquisitions.

For the reasons set forth above, we urge the Federal Communications Commission to refrain from any further relaxation of the established regulatory restrictions on cable ownership. Indeed, we urge the Commission to initiate *divestiture* in the case of firms which: (a) own other major media outlets, besides cable, in a given metropolitan area; *and/or* (b) own cable systems in each of several different metropolitan areas.

Respectfully submitted,

By: ____

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October 10, 2001